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August 30, 2019

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: Ex parte presentation in WC Docket No. 18-155

Dear Ms. Dortch:

Inteliquent, Inc. ("Inteliquent") submits this letter into the record of the above-referenced docket to respond to recent filings and to put forth a proposal that draws upon the perspectives of a variety of different commenters.

Our proposal consists of three main concepts: (1) clarifying that an IXC meets its call completion duties when it delivers a call to the tandem designated by the LEC in the LERG, to ensure that high-volume calling platforms can't make an end-run around the Commission's rules and profit from schemes in which they block the very same traffic that they stimulate, (2) updating the definition of access stimulation to incorporate a mileage component, and (3) adopting, with a small modification, both Prong 1 and Prong 2 of the Commission's proposal requiring access-stimulating LECs either to be financially responsible for calls delivered to their networks or to accept direct connections. Implementing these three measures will help combat the substantial access arbitrage problems identified in the Commission's well-developed record.

First, the Commission should clarify that IXCs and intermediate providers that successfully hand off traffic to the tandem designated by the LEC in the LERG have met their call completion duties. Without this clarification, high-volume calling platforms will easily skirt both existing and any new rules to combat terminating access arbitrage.

In an especially malicious form of arbitrage, high-volume calling platforms and/or their LEC partners are intentionally rejecting the very traffic that they have stimulated—all as a means of causing that traffic to be route advanced to an unregulated intermediary owned by the calling platform.[1] Although this scheme is unlawful because it entails traffic blocking or other

[1] *See, e.g.*, SDN Comments at 2-3 ("SDN has experienced a tremendous number of terminating calls, sometimes thousands per day, that, from SDN's perspective, are being rejected by a CLEC

intentional diversion of traffic, the financial incentives for calling platforms to engage in it apparently are significant, and so the practice is becoming more common in the market.

Inteliquent has extensively documented the call-blocking scheme and its effects in Comments, Reply Comments, and in *ex parte* letters on Oct. 19, 2018, Nov. 16, 2018, April 18, 2019, and May 14, 2019 in this proceeding. Inteliquent is not alone in experiencing, and documenting for the record, access arbitrage schemes in which terminating traffic is diverted from the regulated path to enrich a high-volume calling platform or affiliates via call blocking or its equivalent. For example, AT&T provided evidence that access stimulating LECs and high-volume calling platforms are rigging traffic flows in an attempt to divert traffic to the calling platforms' affiliated private networks. AT&T explained that an access stimulating CLEC, "seemingly overnight... increased its traffic by 20,000,000 minutes of use per month (the equivalent traffic of all of New York City) and provided no business-to-business forecast notice to either the intermediate carrier it sub-tends or AT&T directly."[2] This access stimulation traffic greatly exceeded the existing trunk capacity, causing significant costs. When AT&T inquired about this significant change, "[t]he access stimulating CLEC suggested that rather than seeking to augment existing facilities in the current call flow, AT&T should use a higher cost, non-carrier provider of termination service (HD Tandem) to route the stimulated access traffic to the CLEC."[3]

To put a stop to this newest form of access arbitrage, the most critical step the Commission must take is to declare that a covered provider has met its call completion obligation when it has delivered the call to the tandem designated by the LEC in the LERG.[4] This clarification will provide certainty within the industry and make clear to certain high-volume calling platforms that they cannot use call blocking, or other related schemes, to elude the new remedial measures that the Commission may adopt in this proceeding. This will also help shut down unlawful call blocking practices, and it will foreclose gamesmanship by certain companies designed to circumvent the Commission's revenue sharing trigger for access stimulation traffic. Such a clarification would also unequivocally inform high-volume calling platforms and their affiliated networks that they cannot exploit call completion duties to drive

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engaged in access stimulation in connection with a 'free' conference calling customer."); INS/Aureon Reply Comments at 18 ("Aureon has experienced this very sort of arbitrage, whereby calls routed by Aureon to a LEC are blocked, but when calls are routed to the LEC through HD Tandem, those calls miraculously complete.").

[2] AT&T Fe. 5, 2019 *Ex Parte* at 6.

[3] *Id.*

[4] When a carrier reroutes the call, it may be sent to a carrier not subject to the access stimulation rules, such as a long-distance provider affiliated with the high volume calling platform. Such a provider may charge amounts that are significantly above the amounts resulting from the implementation of the revised rules proposed herein.

traffic to affiliated networks. Without this important clarification, arbitrageurs will make an end-run around the Commission's rules to combat access arbitrage.

Second, in addition to the call blocking clarification outlined above, we propose that the Commission modify the current definition of access stimulation to thwart mileage pumping schemes, by simply incorporating a new mileage-related trigger before applying the revenue sharing and ratio/growth prongs of the current definition. Specifically, the Commission should revise the definition of access stimulation by first inquiring whether the number of transport miles for which a carrier(s) assesses charges, inclusive of all miles between the end office and a tandem, on the one hand, and the end office and a remote terminal, on the other, exceeds ten miles. This ten mile benchmark would include all miles from all carriers between the tandem and the end office serving the end user or platform. If this mileage is equal to or less than ten miles, then the carrier would be deemed not to be engaging in access stimulation. If this mileage exceeds ten miles, then the Commission's current triggers regarding revenue sharing and a ratio of 3:1 or 100% growth would be assessed. If a carrier is determined to be engaging in access stimulation according to this updated definition, the carrier should be given an opportunity to rebut that presumption by demonstrating unique circumstances that warrant a finding that it is not engaged in access stimulation despite having met the triggers.

Such a modification would allow carriers to recover legitimate costs, while reducing the incentive to engage in harmful mileage pumping practices. The ten mile benchmark also creates a distinct and measurable test that all carriers can validate. Because one of the primary arbitrage opportunities related to access stimulation stems from charges based on per-minute-of-use and per-mile-traveled, this updated definition would limit the opportunity for a windfall stemming from such practices that still evades the current definition of access stimulation. The Commission's current rule could be modified as follows to implement this important change (new text is underlined in the below):

> *47 C.F.R. § 61.3 (bbb) Access stimulation. ~~(1)~~ A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier engages in access stimulation when it (1) assesses mileage charges in excess of ten miles, inclusive of miles between the end office and a tandem, on the one hand, and the end office and a remote terminal, on the other. This ten mile limit includes all miles from all carriers between the tandem and the end office serving the end user or platform, and*
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> *(2) The carrier also satisfies the following two conditions:*
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> *(i) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all*

payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account; and

(ii) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.

(3) The local exchange carrier will continue to be engaging in access stimulation until it begins assessing charges for fewer than ten miles inclusive of miles between the end office and a tandem, on the one hand, and the end office and a remote terminal, on the other, and terminates all revenue sharing arrangements covered in paragraph (a)(2)(i) of this section. Alternatively, the local exchange carrier may rebut the presumption that it is engaged in access stimulation by providing evidence demonstrating that although the prongs of the Commission's definition have been met, it is nevertheless not engaged in access stimulation. A local exchange carrier engaging in access stimulation is subject to revised interstate switched access charge rules under §61.38 and §69.3(e)(12) of this chapter.

Finally, if a carrier is deemed to be engaging in access stimulation under the updated definition proposed above, we support the Commission's proposal regarding the options for access stimulating LECs to either: (i) bear the financial responsibility for the delivery of terminating traffic to their end office, or functional equivalent, or; (ii) accept direct connections from either the IXC or an intermediate access provider of the IXC's choice. The determination of which option is implemented, however, should be made by the IXC and not the access stimulating LEC. Both of the Commission's proposed prongs have received support in the record, and the choice between the two options provides a sufficient level of flexibility.

This combination of clarification of call-completion duties, an updated access stimulation definition, and adoption of the Commission's proposals strikes a balance among a variety of different perspectives on how best to address the costs and inefficiencies introduced by access stimulation arbitrageurs. This approach implements the Commission's well supported proposal for dealing with access stimulating LECs and responds to the Commission's request about whether and how to revise the access stimulation definition. As NTCA pointed out in its Reply Comments, "[t]he Commission two-pronged proposal unquestionably achieves the goal of setting proper incentives, offering in particular an incentive for more efficient arrangements for

exchanging traffic between LECs and IXCs in the case of such high volumes—and shifted financial responsibility if that does not occur."[5]

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For efforts to combat access arbitrage to succeed, it is critical that the Commission include in its ruling that a call is deemed complete when it is delivered to the tandem designated by the LEC in the LERG. With that clarification and a minor update to the definition of access stimulation, Inteliquent agrees that implementing the FCC's two-pronged proposal will go a long way toward combatting harmful access arbitrage.

Sincerely,

Matthew S. DelNero
Thomas G. Parisi
Counsel to Inteliquent

[5] NTCA Reply Comments at 3.